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8 IN THE UNITED STATES DISTRICT COURT
9 EASTERN DISTRICT OF CALIFORNIA

10 UNITED STATES OF AMERICA,
11
12 Plaintiff,
13
14 v.
15 JULIO CHAVEZ-LUCATERO,
DENNISE CASTRO-LOPEZ,
DESTANEY WALKER, AND
BRYAN SAHAGUN,
16 Defendants.

CASE NO. 1:20-CR-00062-JLT-KSO

STIPULATION REGARDING EXCLUDABLE
TIME PERIODS UNDER SPEEDY TRIAL ACT;
ORDER

DATE: December 7, 2022
TIME: 1:00 p.m.
COURT: Hon. Sheila K. Oberto

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18 This case is set for a status conference on December 7, 2022. The parties stipulate and request
19 the Court to order that the jury trial be set for January 30, 2024. This General Order was entered to
20 address public health concerns related to COVID-19. Further, pursuant to General Order 614, 620, 624,
21 628, and 630 and the CARES Act, this Court's declaration of judicial emergency under 18 U.S.C. §
22 3174, and the Ninth Circuit Judicial Council's Order of April 16, 2020 continuing this Court's judicial
23 emergency, this Court has allowed district judges to continue all criminal matters to a date after May 1,
24 2020.¹

25 Although the General Order addresses the district-wide health concern, the Supreme Court has
26 emphasized that the Speedy Trial Act's end-of-justice provision "counteract[s] substantive

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28 ¹ A judge "may order case-by-case exceptions" at the discretion of that judge "or upon the
request of counsel, after consultation with counsel and the Clerk of the Court to the extent such an order
will impact court staff and operations." General Order 618, ¶ 7 (E.D. Cal. May 13, 2020).

openendedness with procedural strictness,” “demand[ing] on-the-record findings” in a particular case. *Zedner v. United States*, 547 U.S. 489, 509 (2006). “[W]ithout on-the-record findings, there can be no exclusion under” § 3161(h)(7)(A). *Id.* at 507. And moreover, any such failure cannot be harmless. *Id.* at 509; *see also United States v. Ramirez-Cortez*, 213 F.3d 1149, 1153 (9th Cir. 2000) (explaining that a judge ordering and ends-of-justice continuance must set forth explicit findings on the record “either orally or in writing”).

Based on the plain text of the Speedy Trial Act—which *Zedner* emphasizes as both mandatory and inexcusable—General Orders 611, 612, 617, 618, and 620 and the subsequent declaration of judicial emergency require specific supplementation. Ends-of-justice continuances are excludable only if “the judge granted such continuance on the basis of his findings that the ends of justice served by taking such action outweigh the best interest of the public and the defendant in a speedy trial.” 18 U.S.C. § 3161(h)(7)(A). Moreover, no such period is excludable unless “the court sets forth, in the record of the case, either orally or in writing, its reason or finding that the ends of justice served by the granting of such continuance outweigh the best interests of the public and the defendant in a speedy trial.” *Id.*

The General Orders and declaration of judicial emergency exclude delay in the “ends of justice.” 18 U.S.C. § 3161(h)(7) (Local Code T4). Although the Speedy Trial Act does not directly address continuances stemming from pandemics, natural disasters, or other emergencies, this Court has discretion to order a continuance in such circumstances. For example, the Ninth Circuit affirmed a two-week ends-of-justice continuance following Mt. St. Helens’ eruption. *Furlow v. United States*, 644 F.2d 764 (9th Cir. 1981). The court recognized that the eruption made it impossible for the trial to proceed. *Id.* at 767-68; *see also United States v. Correa*, 182 F. Supp. 326, 329 (S.D.N.Y. 2001) (citing *Furlow* to exclude time following the September 11, 2001 terrorist attacks and the resultant public emergency). The coronavirus is posing a similar, albeit more enduring, barrier to the prompt proceedings mandated by the statutory rules.

In light of the societal context created by the foregoing, this Court should consider the following case-specific facts in finding excludable delay appropriate in this particular case under the ends-of-justice exception, § 3161(h)(7) (Local Code T4).² If continued, this Court should designate a new date

² The parties note that General Order 612 acknowledges that a district judge may make “additional findings to support the exclusion” at the judge’s discretion. General Order 612, ¶ 5 (E.D.

for the status conference. *United States v. Lewis*, 611 F.3d 1172, 1176 (9th Cir. 2010) (noting any pretrial continuance must be “specifically limited in time”).

STIPULATION

Plaintiff United States of America, by and through its counsel of record, and defendants, by and through defendants’ counsel of record, hereby stipulate as follows:

1. By this stipulation, parties now move to set the jury trial for January 30, 2024, and to exclude time from December 7, 2022, to January 30, 2024 under Local Code T4.

2. The parties agree and stipulate, and request that the Court find the following:

a) The government has represented that the discovery associated with this case includes investigative reports, photographs, cell phone records, and related documents in electronic form, which are voluminous in nature. All of this discovery has been either produced directly to counsel and/or made available for inspection and copying.

b) Defense counsel has requested additional discovery that the government is attempting to obtain, review, and process if necessary.

c) Counsel for defendants believe that failure to grant the above-requested continuance would deny him/her the reasonable time necessary for effective preparation, taking into account the exercise of due diligence.

d) Based on the above-stated findings, the ends of justice served by continuing the case as requested outweigh the interest of the public and the defendant in a trial within the original date prescribed by the Speedy Trial Act.

e) For the purpose of computing time under the Speedy Trial Act, 18 U.S.C. § 3161, et seq., within which trial must commence, the time period of December 7, 2022 to January 30, 2024, inclusive, is deemed excludable pursuant to 18 U.S.C. § 3161(h)(7)(A), B(iv) [Local Code T4] because it results from a continuance granted by the Court at defendant’s request on the basis of the Court’s finding that the ends of justice served by taking such action outweigh the best interest of the public and the defendant in a speedy trial.

Cal. March 18, 2020).

3. Nothing in this stipulation and order shall preclude a finding that other provisions of the Speedy Trial Act dictate that additional time periods are excludable from the period within which a trial must commence.

IT IS SO STIPULATED.

Dated: December 1, 2022

PHILLIP A. TALBERT
United States Attorney

/s/ LAUREL J. MONTOYA
LAUREL J. MONTOYA
Assistant United States Attorney

Dated: December 1, 2022

/s/ MARC DAYS
MARC DAYS
Counsel for Defendant
Julio Chavez-Lucatero

Dated: December 1, 2022

/s/ KEVIN P. ROONEY
KEVIN P. ROONEY
Counsel for Defendant
Dennise Castro-Lopez

Dated: December 1, 2022

/s/ MONICA BERMUDEZ
MONICA BERMUDEZ
Counsel for Defendant
Bryan Sahagun

Dated: December 1, 2022

/s/ ANTHONY P. CAPOZZI
ANTHONY P. CAPOZZI
Counsel for Defendant
Destaney Walker

ORDER

IT IS SO ORDERED.

DATED: 12/2/2022

Sheila K. Oberto

THE HONORABLE SHEILA K. OBERTO
UNITED STATES MAGISTRATE JUDGE